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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,064	07/11/2003	Jeffrey A. Schuster	AERX-062CON3	4324
24353	7590	04/15/2004	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP 200 MIDDLEFIELD RD SUITE 200 MENLO PARK, CA 94025			PAIK, SANG YEOP	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/618,064	Applicant(s) SCHUSTER ET AL.	
	Examiner Sang Y Paik	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-63 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 32-63 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/11/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 32-63 rejected under 35 U.S.C. 103(a) as being unpatentable over Ingebrethsen (US 4,388,574).

Ingebrethsen shows a drug delivery device having a channel for an airflow path with a first opening and a second opening, a heating wire element, a battery power source to power the heating element, a temperature sensor for sensing the temperature of the device and to adjust the current power supply to the heating element. Ingebrethsen further shows a current regulating means that is time-based. However, Ingebrethsen does not explicitly disclose the type of heating wire with respect to its gauge type, heating surface and weight as well as its heating capacity.

But, Ingebrethsen shows that the heating element can vary in its size, composition and configuration to meet the desired heating capacity so that aerosol can be adequately and sufficiently heated. While Ingebrethsen does not explicitly disclose the recited heating element materials, heating capacity and the rate at which the heating is achieved, it will be obvious to one of ordinary skill in the art to use such recited heating element and capacity since Ingebrethsen leaves it to one of ordinary skill to choose any suitable type of the elements and rate, including the recited elements, to sufficiently and adequately provide the necessary heat to heat the aerosol since the weight and size of the heating element would vary the heating capacity of the heating

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element, i.e., larger and heavier heating element would provide a larger electrical resistance that would produce a high heating capacity whereas a smaller and lighter heating element would produce a small electrical resistance that would be more quickly heated to produce the desired heating temperature. Since the heating capacity depends on the supplied current and the electrical resistance of the heating element, it would have been obvious to one of ordinary skill in the art to provide a heater with various sizes, composition and configuration to adjust and select the desired heating capacity that is suitable for its intended heating operation.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Krauser (US 4,523,589), McPhee (US 5,537,996), Weiss (US 4,365,141) and Goss et al (US 4,733,059).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y Paik whose telephone number is 703-308-1147. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Paik

Sang Y Paik
Primary Examiner
Art Unit 3742

syp